Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

NO. 83, ORIGINAL

STATE OF MARYLAND,
STATE OF ILLINOIS,
STATE OF INDIANA,
COMMONWEALTH OF MASSACHUSETTS,
STATE OF MICHIGAN,
STATE OF NEW YORK,
STATE OF RHODE ISLAND AND
PROVIDENCE PLANTATIONS,
STATE OF WISCONSIN

Plaintiffs,

v.

STATE OF LOUISIANA,

Defendant.

BRIEF OF STATE OF ALABAMA IN SUPPORT OF PLAINTIFFS' MOTION FOR LEAVE TO FILE COMPLAINT

CHARLES A. GRADDICK
Attorney General
State of Alabama
250 Administrative Building
Montgomery, Alabama 36130

WENDELL CAULEY
Assistant Attorney General
Consumers' Utility Counsel
250 Administrative Building
Montgomery, Alabama 36130

Counsel for Amicus Curiae

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INTEREST OF AMICUS CURIAE

The State of Alabama is a substantial consumer of natural gas. The Louisiana First Use Tax ("First Use Tax") is imposing a weighty burden upon Alabama and its citizens, and is apt to cause the State grave economic decline. Alabama borders the Gulf of Mexico in close proximity to Louisiana; it is situated in a region different than any of

the eight plaintiff states. The immediate annual cost of the First Use Tax to Alabama, its instrumentalities, and its citizens is estimated to exceed 5 million dollars. Alabama's proprietary interest is to terminate the direct economic injury to the State and its instrumentalities. The State's interest, as *parens patriae*, is to arrest the mischief the First Use Tax is doing to the health, welfare, and economic life of Alabama's citizens.

ARGUMENT

The State of Alabama adopts and concurs in the eight plaintiff states' brief in support of their motion for leave to file a complaint. Alabama writes simply to emphasize the magnitude of the economic consequence of the First Use Tax and the urgency of an expeditious resolution of this discord.

The first dollars have been withdrawn from the Alabama treasury and from the pockets of the State's citizens to pay the First Use Tax. These payments began with the April billing collections of Alabama's natural gas distribution companies. For example, Alabama's largest, retail, natural gas distribution company, Alabama Gas Corporation ("Alagasco") serves approximately 346,000 residential, commercial, and industrial customers. Alagasco purchases 92% of its gas supply from Southern Natural Gas Company ("Southern"). Southern obtains the bulk of its general gas supply from southern and offshore Louisiana.

Southern and other pipelines are reimbursed for their payment of the First Use Tax by the operation of a "tracking mechanism" which was approved by the Federal Energy Regulatory Commission. Alagasco recoups from its customers all increases in the cost of its gas supply by the operation of the "Purchased Gas Adjustment Rider" ("PGA Rider"), a part of the company's rate schedules. Under Alagasco's PGA Rider purchased gas cost adjustments become effective with bills dated the fifteenth day following any date of change in supplier rates. In short, Alagasco and Southern have passed the First Use Tax on to consumers. Beginning April 15, 1979, Alagasco included the Tax in its statements of account to the State of Alabama, its instrumentalities, and its citizens.

The First Use Tax is being gathered subject to refund, pending a final judicial resolution respecting the constitutionality of the Tax. But in Alabama, the instant burden of the Tax is being suffered by individuals who use natural gas for cooking, bathing, heating, and other domestic purposes. Undoubtedly, in all of the affected states, people use natural gas in functions vital to their health and welfare. An increase in utility charges creates desparate conditions for many of Alabama's impoverished and fixed income citizens. The interests of impoverished citizens and the interests of persons on fixed incomes must be weighed when assessing the prudence of the course of leaving the question of the constitutionality of the First Use Tax to travel through the Louisiana courts. For some of these individuals, the increase in gas rates due to the First Use Tax may determine whether they can maintain this essential service. For these individuals the prospect of a refund after the ultimate decision of this case is no consolation.

Additionally, the amount of the First Use Tax increases as consumption increases. The burden imposed by the Tax will be greatest during the heating season when consumers are already facing the additional burden of higher fuel costs. The impact of the Tax in terms of human suffering is neither subject to measurement nor susceptible to compensation. Prior to the next heating season a terminal ruling on the constitutionality of the First Use Tax is urgently needed.

The First Use Tax also jeopardizes the health and welfare of Alabama's citizens by adversely touching commerce and industry. Provision for the collection of the First Use Tax subject to refund does not sufficiently mollify the hostile effects of the Tax upon the economies of the affected states. If this case is permitted to journey through the Louisiana courts prior to reaching this Court and the First Use Tax is ultimately determined to infringe the Constitution, the dollars which are refunded will have dissipated purchasing power. To any consumer, a dollar today is worth more than a dollar tomorrow or a year from now. Refund of the First Use Tax with interest will not fully compensate consumers either for missed opportunity costs or for the pillage of inflation. Refund will not restore business opportunities forgone, industries lost, or taxes uncollected by states which have large amounts of money removed from their economies by the First

Use Tax. The nation's precarious economic condition bespeaks the urgent want for a final decision of this matter.

CONCLUSION

The First Use Tax has a grave present impact upon the economies of the affected states and upon the lives of these states' citizens. Refund of the First Use Tax with interest will not fully compensate for the human suffering and deprivation, or the economic consequences resulting from present collection of the Tax. The original jurisdiction of the Supreme Court exists to remedy real and substantial injuries inflicted by one state upon others. Through the First Use Tax, by means contrary to the Constitution, Louisiana is imposing serious burdens upon her sisters. For these reasons, this Court should grant plaintiffs' Motion for Leave to File Complaint and should assume jurisdiction.

Respectfully submitted,

CHARLES A. GRADDICK
Attorney General
State of Alabama
250 Administrative Building
Montgomery, Alabama 36130

WENDELL CAULEY
Assistant Attorney General
Consumers' Utility Counsel
250 Administrative Building
Montgomery, Alabama 36130
On The Brief

Counsel for Amicus Curiae

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AFFIDAVIT OF PROOF OF SERVICE

State of Alabama Montgomery County

I, the undersigned, Assistant Attorney General Of Alabama, 64 North Union, Montgomery, Alabama 36130, hereby certify that I have deposited for Service, Airmail Postage Prepaid, three (3) printed copies of A Brief Of State Of Alabama In Support Of Plaintiffs' Motion For Leave To File Complaint to William J. Guste, Attorney General

Of Louisiana, 234 Loyola Building, Seventh Floor, New Orleans, Louisiana 70112; Stephen H. Sachs, Attorney General Of Maryland, 1400 One South Culvert Building, Baltimore, Maryland 21202; William J. Scott, Attorney General Of Illinois, 500 South Second, Springfield, Illinois 62706; Theodore L. Sendak, Attorney General Of Indiana, 219 State House, Indianapolis, Indiana 46204; Francis X. Bellotti, Attorney General Of Massachusetts, One Ashburton Place, Boston, Massachusetts 02108; Frank J. Kelly, Attorney General Of Michigan, 525 West Ottawa Street, Lansing, Michigan 48913; Robert Abrams, Attorney General Of New York, #2 World Trade Center, New York, New York 10047; Dennis J. Roberts, II, Attorney General Of Rhode Island, Providence County Courthouse, Providence, Rhode Island 02903; Bronson C. LaFollette, Attorney General Of Wisconsin, 114E State Capitol, Madison, Wisconsin 53702; Edward Berlin, Leva, Hawes, Symington, Martin And Oppenheimer, 815 Connecticut Ave. N.W., Washington, D. C. 20006, and sixty printed copies to The Clerk Of The Supreme Court Of The United States. This the 23rd day of May, 1979.

Assistant Attorney General
250 Administrative Building
Montgomery, Alabama 36130

Sworn to and subscribed before me the undersigned, this the 23rd day of May, 1979.

Notary Public.